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The American Conception of Liberty
and
The American Conception of Government

By

Frank Johnson Goodnow, LL.D.

President of Johns Hopkins University

Providence
Printed for the University

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THE end of the eighteenth century was marked by the formulation and general acceptance by thinking men in Europe of a political philosophy which laid great emphasis on individual private rights. Man was by this philosophy conceived of as endowed at the time of his birth with certain inalienable rights. Thus, Rousseau in his "Social Contract" treated man as primarily an individual and only secondarily as a member of human society. Society itself was regarded as based upon a contract made between the individuals by whose union it was formed. At the time of making this contract these individuals were deemed to have reserved certain rights spoken of as "natural" rights. These rights could neither be taken away nor be limited without the consent of the individual affected.

Such a theory, of course, had no historical justification. There was no record of the making of any such contract as was postulated. It was impossible to assert, as a matter of fact even, that man existed first as an individual and that later he became, as the result of any act of volition on his part, a member of human society. But at a time when truth was sought usually through speculation rather than observation, the absence of proof of the facts which lay at the basis of the theory did not seriously trouble those by whom it was formulated or accepted.

While there was no justification in fact for this social contract theory and this doctrine of natural rights, their acceptance by thinking men did nevertheless have

an important influence upon the development of thought and in that way upon the actual conditions of human life. For these theories were not only a philosophical explanation of the organization of society; they were at the same time the result of the then existing social conditions, and like most such theories were also an attempt to justify a course of conduct which was believed to be expedient.

At the end of the eighteenth century a great change was beginning in Western Europe. The enlargement of the field of commercial transactions, due to the discovery and colonization of America and to the contact of Europe with Asia, particularly with India, had opened new spheres of activity to those minded for adventure. The invention of the steam engine and its application to manufacturing were rapidly changing industrial conditions. The factory system was in process of establishment and had already begun to displace domestic industry.

The new possibilities of reward for individual endeavor made men impatient of the restrictions on private initiative incident to an industrial and commercial system which was fast passing away. They therefore welcomed with eagerness a political philosophy which, owing to the emphasis it placed upon private rights, would if acted upon have the effect of freeing them from what they regarded as hampering limitations on individual initiative.

This political philosophy was incorporated into the celebrated Declaration of the Rights of Man and of the Citizen promulgated in France on the eve of the Revolution. A perusal of this remarkable document reveals the fact, however, that the reformers of France had not altogether emancipated themselves from the

influences of their historical development. For almost every clause of the Declaration refers to rights under the law rather than to rights which were natural to and inherent in man.

The subsequent development in Europe of this private rights philosophy is along the lines thus marked out by the Declaration. The rights which men have been recognized as possessing have not been considered to be inherent rights, attaching to man at the time of his birth, so much as rights which find their origin in the law as adopted by that organ of government regarded as representative of the society of which the individual man is a member.

In a word, man is regarded now throughout Europe, contrary to the view expressed by Rousseau, as primarily a member of society and secondarily as an individual. The rights which he possesses are, it is believed, conferred upon him, not by his Creator, but rather by the society to which he belongs. What they are is to be determined by the legislative authority in view of the needs of that society. Social expediency, rather than natural right, is thus to determine the sphere of individual freedom of action.

The development of this private rights philosophy has been, however, somewhat different in the United States. The philosophy of Rousseau was accepted in this country probably with even greater enthusiasm than was the case in Europe. The social and economic conditions of the Western World were, in the first place, more favorable than in Europe for its acceptance. There was at the time no well-developed social organization in this country. America was the land of the pioneer, who had to rely for most of his success upon his strong right arm. Such communities as did

exist were loosely organized and separated one from another. Roads worthy of the name hardly existed and communication was possible only by rivers which were imperfectly navigable or over a sea which, when account is taken of the vessels then in use, was tempestuous in character.

Furthermore, the religious and moral influences in this country, which owed much to the Protestant Reformation, all favored the development of an extreme individualism. They emphasized personal responsibility and the salvation of the individual soul. It was the fate of the individual rather than that of the social group which appealed to the preacher or aroused the anxiety of the theologian. It was individual rather than social morality which was emphasized by the ethical teacher and received attention in moral codes. Everything, in a word, favored the acceptance of the theory of individual natural rights.

The result was the adoption in this country of a doctrine of unadulterated individualism. Every one had rights. Social duties were hardly recognized, or if recognized little emphasis was laid upon them. It was apparently thought that every one was able and willing to protect his rights, and that as a result of the struggle between men for their rights and of the compromise of what appeared to be conflicting rights would arise an effective social organization.

The rights with which it was believed that man was endowed by his Creator were, as was the case in France, set forth in bills of rights which formed an important part of American constitutions. The form in which they were stated in American bills of rights was subject to fewer qualifications than was the case in France. Their origin was found in nature rather than in the

law. The development of these rights, further, has been quite different from the European development which has been noted. American courts, early in the history of the country, claimed and secured the general recognition of a power to declare unconstitutional and therefore void acts of legislation which, in their opinion, were not in conformity with these bills of rights. In their determination of these questions, American courts appear to have been largely influenced by the private rights conception of the prevalent political philosophy. The result has been that the private individual rights of American citizens have come to be formulated and defined, not by representative legislative bodies, as is now the rule in Europe, but by courts which have in the past been much under the influence of the political philosophy of the eighteenth century.

In thus adopting the Continental political philosophy of the eighteenth century, American judges modified greatly the conception of individual liberty which was the basis of English political practice. The most important modifications were two in number:—

In the first place, the rights of men, of which their liberty consisted, were, as natural rights, regarded in a measure—and in no small measure—as independent of the law. This modification of the original English idea was an almost necessary result of the fact that these rights were set forth in written constitutions, which were placed under the protection of courts. The written constitution was considered to be the act of the sovereign people. It therefore was superior to any mere laws which might be passed by the representatives of the people in the lawmaking bodies. These bodies being simply delegates of the people were not authorized to do anything not within the powers

granted to them. If a written constitution provided that a man had a certain right, it was evident that the legislature could not take it away from him. When the courts assumed in the United States the power to declare unconstitutional acts of the legislature, they did so because their duty was to apply the law as they found it. They might not, therefore, apply as law an act of the legislature which in their opinion was in conflict with the Constitution, since, being in conflict with the Constitution, the highest law of all, such an act could not be law.

In this way natural rights came to have an existence apart from the law, or, at any rate, apart from the law as it had up to that time been understood.

The importance which was attributed by the Americans of those days to this idea of natural rather than legal rights will be appreciated when we recall that the Constitution of the United States, which in its original form contained few if any provisions relative to these natural rights, was ultimately adopted only on condition that they should be enumerated in a bill of rights to be appended to the Constitution. This was subsequently done in Amendments I to IX. The Ninth Amendment to the United States Constitution in particular is a characteristic expression of the feeling of the time that these natural rights existed independently of all law. It reads: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

In the second place, our American courts emphasized substantive rights rather than the right to particular methods of procedure. Most of the historic rights of Englishmen had been rights to particular methods of action. Thus, the right to a special kind of trial for

crime—that is, the right to trial by jury—was regarded as one of the most sacred rights of an Englishman.

The English insistence on particular methods of procedure was due to the belief that these methods had shown themselves, as the result of a long experience, to be valuable aids in securing the end desired. This end was freedom from arbitrary autocratic action on the part of those to whom political power had been entrusted. It was the rule of law—that is, the rule of a principle of general application as opposed to the rule of a person arbitrary and capricious—which the Englishman sought. It was to secure his rights through this rule of law that he originated the form of government which has been called "constitutional." The Englishman, as a matter of fact, never claimed that he had any natural rights; that is, rights to which he was entitled by reason of the fact that he is a man, a human being. He was perfectly satisfied if it was recognized in his political and legal system that no attempt might be made, except in the manner by law provided, to take away what he might think were his rights. This claim being admitted, he felt that in some way or other he would be able to have the law so formulated that he could secure the recognition of all substantive rights which he ought at any particular time to possess. To secure the recognition in the law of these substantive rights he insisted upon the grant to more and more of the people of the land of the power to control legislation. For through the control of legislation was obtained the power to determine what are his rights.

The rights of Englishmen were, therefore, so far as they were defined at all, to be found in acts of legislation and in judicial decisions. One of the earliest and

most important of these acts of legislation is what is known as the Great Charter, which was originally forced from a reluctant king in 1215. The most notable clauses of the Great Charter deal not so much with what have been called "substantive" as with procedural rights. Thus, in section 12 the Crown enacts that "no scutage or aid [i. e., no tax] shall be imposed in our kingdom unless by the General Council of our kingdom." Section 14 provides how the General Council shall be composed and called together. Section 39, probably the most important section of all, provides that "no freeman shall be taken or imprisoned or disseized or outlawed or banished or anyways destroyed, nor will we pass upon him nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land."

It will be noticed that this famous provision of the Great Charter accords hardly any recognition to a substantive right. It is not said that a freeman has any right not to be "taken or imprisoned or disseized or outlawed or banished." Indeed it is clearly implied that such a right does not exist. What the section does say is that these things shall not be done to the freeman except in a specified way, which is, according to law. It is the rule of law which the Great Charter emphasizes. It was to the rule of law then that the Englishmen of the beginning of the thirteenth century were striving to attain.

The power of the American courts to determine in the concrete and in detail,—which after all is the only thing that amounts to much in this life,—the content of private rights was very large because of the fact that these rights were often stated in very general terms in the Constitution. The most marked instance

of such vagueness is perhaps to be found in the almost universal provision that no one shall be deprived of life, liberty or property without due process of law. The Constitution does not define property nor liberty nor due process of law. All of these matters have had to be "pricked out," as Mr. Justice Holmes of the United States Supreme Court has said in decisions which are almost too numerous to be counted.

The following are some of the conclusions characteristic of American ideas of private rights which the courts have reached:

The clause providing that private property shall not be taken for public use without just compensation has been interpreted as prohibiting inferentially the taking of property for private use. The interpretation is really due to the recognition in the individual of a natural inherent substantive right of property which may be taken from him by the government only in the case mentioned in the Constitution, viz., by taking property for public use. It is therefore altogether probable that the American courts would have held unconstitutional an act of the legislature similar to the recent act of the British Parliament apportioning the property which had been held to belong to what was known as the "Scotch Wee Kirk" between that church and the "Free Kirk."

Again the clause providing that no person shall "be deprived of life, liberty or property without due process of law" has been held by some of the State courts, under the influence of the idea of inherent absolute individual substantive rights to prevent the legislature from passing an act which changes the basis of the liability of employer to employed. The old basis of the liability was negligence. The act declared uncon-

stitutional provided in the case of accident a liability on the part of the employer regardless of the question whether he was negligent or not. Other acts of legislation have been declared unconstitutional as violating this due process clause, because they imposed upon an employer the duty to pay employees in money, or at stated periods, or because they forbade an employer to work his men more than a certain number of hours a week or a day. These acts were held unconstitutional as depriving either the employer or the employed of his property or his liberty.

Such decisions have been reached as a result of the fact that the American courts have emphasized the idea of a substantive right and have lost sight of the fact that the right granted in the Constitution if defined in the light of its history was a right not under all conceivable circumstances to liberty or property, but merely a right not to be deprived of liberty or property except in a certain way, that is, by due process of law. The fact that in all these cases an act of the legislature, that is, a law in the historic English sense, provided that liberty or property should be taken away was not regarded by the courts as due process of law. In fact the courts of the United States have really taken the position that there is no due process of law by which the individual may be deprived of some of these absolute substantive inherent natural rights.

Furthermore and partly as a consequence of the acceptance of the conception of private rights as inherent and not based upon law the content and character of private rights specifically provided for by legislation have been fixed, not so much as the result of an inquiry into their social expediency but rather because it has been believed that the individual has

rights with which he has been endowed by his Creator, rights which it would be improper to take away or to limit even in the interest of society.

Take for example the qualifications required for entrance into the legal profession. What they shall be is, in large if not in controlling degree, determined in view of the assumed existence in every respectable and reasonably intelligent individual of a right to practise law. Such considerations as the evil influence upon the community of a superabundance of lawyers are given very little weight. Although it might easily be shown that the overcrowding of the legal profession almost inevitably leads to an increase of litigation which has evil effects upon the community, that fact is not permitted to have much influence on the determination of the qualifications of lawyers since an encroachment might as a consequence be made upon the inborn and inherent right of every man to become a lawyer.

This general attitude towards private rights is, it seems to me, at the present time in process of modification. Whatever may have been formerly the advantages attaching to a private rights political philosophy—and that they were many I should be the last person to deny—this question of private rights has been reëxamined with the idea of ascertaining whether, under the conditions of modern life, our traditional political philosophy should be retained.

The political philosophy of the eighteenth century was formulated before the announcement and acceptance of the theory of evolutionary development. The natural rights doctrine presupposed almost that society was static or stationary rather than dynamic or progressive in character. It was generally believed at the end of the eighteenth century that there was

a social state which under all conditions and at all times would be absolutely ideal. The rights which man had were believed to come from his Creator. These rights consequently were the same then as they once had been and would always remain the same. Natural rights were in theory thus permanent and immutable. Natural rights being conceived of as eternal and immutable, the theory of natural rights did not permit of their amendment in view of a change in conditions.

The actual rights which at the close of the eighteenth century were recognized were, however, as a matter of fact influenced in large measure by the social and economic conditions of the time when the recognition was made. Those conditions have certainly been subjected to great modifications. The pioneer can no longer rely upon himself alone. Indeed with the increase of population and the conquest of the wilderness the pioneer has almost disappeared. The improvement in the means of communication, which has been one of the most marked changes that have occurred, has placed in close contact and relationship once separated and unrelated communities. The canal and the railway, the steamship and the locomotive, the telegraph and the telephone, we might add the motor car and the aëroplane, have all contributed to the formation of a social organization such as our forefathers never saw in their wildest dreams. The accumulation of capital, the concentration of industry with the accompanying increase in the size of the industrial unit and the loss of personal relations between employer and employed, have all brought about a constitution of society very different from that which was to be found a century and a quarter ago. Changed conditions, it has been

thought, must bring in their train different conceptions of private rights if society is to be advantageously carried on. In other words, while insistence on individual rights may have been of great advantage at a time when the social organization was not highly developed, it may become a menace when social rather than individual efficiency is the necessary prerequisite of progress. For social efficiency probably owes more to the common realization of social duties than to the general insistence on privileges based on individual private rights. As our conditions have changed, as the importance of the social group has been realized, as it has been perceived that social efficiency must be secured if we are to attain and retain our place in the field of national competition which is practically coterminous with the world, the attitude of our courts on the one hand towards private rights and on the other hand towards social duties has gradually been changing. The general theory remains the same. Man is still said to be possessed of inherent natural rights of which he may not be deprived without his consent. The courts still now and then hold unconstitutional acts of legislature which appear to encroach upon those rights. At the same time the sphere of governmental action is continually widening and the actual content of individual private rights is being increasingly narrowed.

About the middle of the nineteenth century the courts of the country invented what is spoken of as the police power, which may be said for all practical purposes to be unaffected by the private rights theory. The government may exercise this police power unrestricted by the constitutional limitations to be found in bills of rights. Where the courts obtained either

the conception or the name of what they call the "police power" it is difficult to say. Indeed it is unnecessary on this occasion to enter upon an inquiry into this subject. It will not be improper, however, to call your attention to the fact that originally "Police" as one of the terms of political science meant government. Political science was indeed the science of police. As, however, the separate branches of government were differentiated such as finance, jurisprudence, diplomacy and military affairs, each of which received separate scientific treatment, the word "police" came to be used to indicate what was left of government after these particular branches had been subtracted therefrom. Later, as the result of a similar process of exclusion, the word "police" came to mean that part of the administration of the strictly domestic or internal affairs of a country which has to do with the attempts made to prevent the happening of evil and to secure through limitations on freedom of individual action good social conditions. The police power is thus the power which is exercised in the interest of the public safety and convenience.

Two circumstances have contributed to the development and exercise of this new power, which, as has been said, is not subject to the constitutional limitations of bills of rights.

The first is to be found in the change in the economic conditions of American life to which reference has already been made. The substitution in industry of mechanical for muscular power with the incidental replacement of hand by machine labor, the consequent development of the factory system with the greater dangers to human life and the increasing prevalence and severity of occupational diseases, have made it

seem necessary for the salvation of the race that man be protected against himself even at the expense of his personal liberty. The greater concentration of population in urban communities with the consequent increased danger to the safety and health of the resident inhabitants has made it necessary to subject the rights of property and of freedom of action to many limitations which under other conditions would not have seemed to be desirable.

The second circumstance which has resulted in the extension of this police power is to be found in the discoveries of preventive medicine. While the change in economic conditions which has been noted has seemed to make necessary the intervention of the government in the interest of the protection of human life, our increased knowledge of public hygiene has made intelligent action possible where before it was hardly to be expected. The discovery of the causes of contagion and infection, the successful results of vaccination and inoculation have all made it desirable to take measures of a protective and preventive character which may be expected to be followed by great benefit to the public health.

The result has been then in recent years a great extension of the police power with the object of securing better conditions of living and the incidental increase in the efficiency of the social group. This extension of the police power has commonly been regarded as constitutional notwithstanding the existence in the bills of rights of the same provisions which were adopted years ago in order to secure to the individual his proper sphere of liberty. It has nevertheless had as an effect great curtailment of the sphere of individual freedom

of action and a rather drastic regulation of the conduct of life.

The extent to which this curtailment of individual freedom has gone will be understood when we recall some of the most notable decisions upon the constitutionality of action which has been taken. It has thus been held to be quite proper from a constitutional point of view to provide for compulsory vaccination not only against smallpox but also against bubonic plague; to provide for isolating even infant children with a contagious disease in a contagious diseases hospital; to compel the individual owner of property to expend considerable sums of money in installing new sanitary arrangements in a house which at the time it was built and even at the time of the passage of the law providing for the installation of such appliances complied in all respects with the law; without compensation to destroy or prohibit the sale of unsanitary or adulterated food products or animals having contagious diseases.

These cases, which by no means exhaust the list, thus recognize as constitutional, action which very seriously infringes upon what at one time was unquestionably regarded as a right of liberty or property. Nevertheless we have recognized the propriety of these decisions and have submitted to them, I will not say cheerfully, but at any rate without any serious active opposition. It seems therefore that we may properly conclude that the demands of social efficiency in the new conditions in which we live have had the effect of modifying very considerably the original American conception of liberty.

Drastic laws have been passed also which curtail the freedom of the individual in the interest of preventing

the development and spread of practices which are regarded as vicious. Most of such legislation has been held to be within the constitutional power of either the Congress of the United States or of the State legislatures. Thus State laws prohibiting the manufacture or sale of intoxicating liquors, cigarettes and harmful drugs and forbidding the carrying on of lotteries, have been upheld, although their indirect effect may have been to destroy the value of large amounts of property. The action of the National Government in denying the right to use the mails, to those engaging in vicious practices and in taking from certain prohibited articles, such as lottery tickets, the character of objects in which interstate commerce may be carried on also has been upheld. Indeed it may be said that once the proper authority in our system of government has determined that a given practice is vicious all the force of the government may notwithstanding bills of rights be used for its suppression.

It is, however, very doubtful whether our fundamental ideas have been subject to great modification in many directions in which the public health and safety or morals have not been directly involved. We have been willing to hold those rights which we are inclined still to regard as natural and inherent subject to the limitations made necessary by considerations of public morality and safety and to a certain extent of public convenience which often is closely connected with the public safety. But we have not as yet been convinced of the desirability of the curtailment of our sphere of individual freedom of action in the interest of anything so general as social efficiency. We still cling to the idea that our rights are more or less natural rights and have not been granted to us by the social

group to which we belong. Our legislation, which reflects our political philosophy, does not require of us much that elsewhere is regarded as absolutely necessary to the development of the highest degree of social efficiency. We still cling to our old individualistic philosophy and if by any chance we compare unfavorably to ourselves the efficiency of some other nation with a more highly developed social organization we comfort ourselves with the reflection that individualism pays in the long run, whatever may be the temporary triumphs of more highly socialized political systems.

Our consoling reflections may be true. I am not going to attempt to deny that they are. I must confess, however, to some doubts on the subject. Certain characteristics of American life can hardly fail to obtrude themselves upon our notice. The lawlessness which by many foreign observers is attributed to us as a people, and the ineffectiveness of our attempts at social coöperation which make many of our municipal governments and most of our state governments failures as compared with the achievements of more than one European people are due in large measure to our belief that a private rights philosophy is applicable to the conditions of our present life. The effect which such a philosophy has had upon our governmental organization I shall not dwell on here as I intend to speak of that at another time. I do, however, wish briefly to call attention to the relation which exists, as it seems to me, between our traditional political philosophy and the lawlessness to which I have alluded.

The emphasis which we have laid on private rights has contributed in two ways to make us, comparatively speaking, a lawless people. In the first place the exercise of the power which the courts have to define and

fix the content of private rights through the declaration that acts passed by legislatures are unconstitutional has caused us as a people to lose respect for the action of our legislative bodies and has encouraged those of us who have believed that that action has encroached on what we have considered to be our rights to resist its enforcement through appeals to the courts. Hardly a legislative act has been passed within the last twenty years by either the United States Congress or by a State legislature imposing a new form of taxation or a new regulation of the freedom of individual action, whose constitutionality has not been attacked in the courts. In probably most cases of importance the litigation has been carried to the Supreme Court of the United States with the result that those affected by such legislation have for two or three years not known whether it was constitutional or not. The uncertainty as to what was the law, and the feeling that there was a good chance that almost any act of the legislature might be declared unconstitutional, have done much in my opinion to cause the unthinking among our people to regard all law with disrespect.

I would not, however, have you think that I am of the opinion that it would be desirable, with the traditions which we have and with our lack of reverence for constituted authority, which is due in large measure to our individualistic philosophy, to take from the courts the power which they now have to declare acts of legislation unconstitutional. Such action would, I believe, be highly undesirable. We have lived too long under our present conditions to permit us with safety to transform those conditions hastily. What I am essaying to do here is merely to point out what appear to be some of the results of the political philosophy

which we as a people have held in the past and which even now we would abandon with great reluctance.

This emphasis continually laid by all classes of persons on what they have regarded as their natural rights and their consequent failure to recognize that they have social duties as well as individual rights have tended further to bring about class conflicts. These conflicts have become very bitter largely because those who have participated in them have often been able to look at the issue presented only from the point of view of their own rights. The employer acting on the theory that he has the right to do what he will with his own has failed to see that he is a member of society with duties to society. On the other hand the laboring man seeing only what he regards as the rights of labor forgets in his turn that it is only as all members of society work together for the common good, that that society can become efficient with the result that its economic product may increase to the common benefit of all.

Of recent years, however, a change is noticeable in our attitude towards these matters. Just as our courts have through their decisions with regard to the police power brought about a very different conception as to the actual content of particular private rights, so our legislation has lately been actuated by ideas very different from those which appealed to our forefathers or even to our fathers.

The first change in ideas which is noticeable was made in the class of activities which are often spoken of generically as "public utilities." On the theory that the public interest was peculiarly concerned in those cases because the enterprises in question were based on public privileges, the conception of regulation in the public interest came finally to be held. Not only

is no constitutional question any more raised as to the power of the competent organ of our government to take the necessary regulatory measures but public opinion justifies regulation of so drastic a character that it would hardly have been deemed possible even a quarter of a century ago. At the present time public utility enterprises are helpless in the face of government action from the point of view of constitutional protection as well as from that of public opinion.

The regulation which in the case of public utilities was justified on the theory that the enterprise was based upon a privilege has since been extended to enterprises which in no sense owe their existence to the possession of such privileges. The justification for the regulation is found in the mere fact that the public interest is involved. Instances of such action are to be found in the anti-trust legislation which has become so common and in the well-nigh universal legislation passed to improve labor conditions. Workingmen's compensation acts, employer's liability and minimum wage laws, compulsory conciliation acts, increase of school opportunities for both the young and the old, paid for out of the proceeds of taxation, all testify to the fact that the private rights philosophy of a century ago no longer makes the appeal that it once did.

We no longer believe as we once believed that a good social organization can be secured merely through stressing our rights. The emphasis is being laid more and more on social duties. The efficiency of the social group is taking on in our eyes a greater importance than it once had. We are not, it is true, taking the view that the individual man lives for the state of which he is a member and that state efficiency is in some mysterious way an admirable end in and of itself.

But we have come to the conclusion that man under modern conditions is primarily a member of society and that only as he recognizes his duties as a member of society can he secure the greatest opportunities as an individual. While we do not regard society as an end in itself we do consider it as one of the most important means through which man may come into his own.

You are probably asking yourselves: What is the purpose of saying these things in this place? What connection have they with a great educational institution? My answer to these questions is this. Those who are in charge of such an institution are under a very solemn obligation. They are in some measure at any rate responsible for the beliefs of the coming generation of thinkers and of moulders of public opinion. We teachers perhaps take ourselves too seriously at times. That I am willing to admit. We may not have nearly the influence which we think we have. Changes in economic conditions for which we are in no way responsible bring in their train regardless of what we teach changes in beliefs and opinions. But if we are unable to exercise great influence in the institution of positive changes, we can by acquainting ourselves with the changes in conditions and by endeavoring to accommodate our teaching to those changes, certainly refrain from impeding progress. This may be an overmodest estimate of the function of a teacher. At the same time it is an ideal the realization of which is not to be despised. For many universities have in the past been the homes of conservatism. New ideas have often knocked for a long time on the gates of learning before they have been permitted to enter. Even after they have passed the portal they are sometimes the

object of a suspicion which it has taken years to allay.

So I repeat we teachers are in a measure responsible for the thoughts of the coming generation. This being the case, if under the conditions of modern life it is the social group rather than the individual which is increasing in importance, if it is true that greater emphasis should be laid on social duties and less on individual rights, it is the duty of the University to call the attention of the student to this fact and it is the duty of the student when he goes out into the world to do what in him lies to bring this truth home to his fellows.

THE AMERICAN CONCEPTION OF GOVERNMENT

THE AMERICAN CONCEPTION OF GOVERNMENT

THE last time I had the honor of speaking to you, I called your attention to the fact that the American conception of liberty had been profoundly influenced by the Natural Rights Philosophy, which was so generally accepted at the end of the eighteenth century. Now, as liberty is the converse of government, this natural rights philosophy in so far as it fixed a sphere of liberty at the same time defined the limits of government. In so far as it provided for a realm of individual freedom of action it determined the content of government activity, and thus laid the basis for a theory with regard to public functions. The limitations which it imposed upon government resulted in the adoption of a policy of non-intervention usually spoken of as *laissez-faire*, which for a long time was controlling.

This natural rights philosophy, however, exercised a much greater influence. It not only furnished us a theory of governmental activity. It also contributed greatly to our ideas of governmental organization. For a governmental organization is almost always formed with the idea of providing a means for the discharge of those functions and of entering upon those activities which the prevailing thought of the time deems it desirable to perform and to undertake.

The point in which the political philosophy of the eighteenth century influenced our governmental organization to which I wish first to call your attention is the matter of sovereignty. I shall not attempt to

define or even to describe sovereignty, except to say that what I mean by it in this connection is the power in ultimate and final instance to determine how the government shall be organized and what it shall do. That power in the United States has been from the latter days of the eighteenth century vested in the people. The people to whom this power has been entrusted have not, it is true, been constituted in the same way during all of our history. Until recently, only those of the male sex have theoretically possessed it. For a considerable time in our history only persons of the male sex who owned a certain amount of property were regarded as constituting the soverign people. In many parts of the country it is even now only the members of the white race who from the point of view of actual fact possess this power. But, however the constituent elements of the sovereign people have varied, the fact still remains that this power has not since the end of the eighteenth century been regarded as residing anywhere but in the people.

Now, this conception of popular sovereignty was one of the necessary prerequisites of the Social Contract Natural Rights Theory. The fact that individuals had natural rights of which they might not be deprived established the people as sovereign, and made it possible for the contract to be made upon which all government was supposed to be based. Such a contract had, as was said in the former lecture, no historical basis. But the social contract theory had just as much justification as the theory of the divine right of kings to oppose which it was propounded. And as the theory of the divine right of kings had as its consequence the doctrine of monarchical sovereignty, so the social contract theory had for its foundation the

idea of popular sovereignty. The fact that neither theory is true does not permit us to deny that under the influence of the one the final power was as a matter of fact in a monarch, and that under the influence of the other that power is in the people.

The acceptance of the theory that this power is vested in the people has had a tremendous influence upon our governmental organization. The people who are sovereign cannot in the nature of things, where they are scattered over a wide area, act at frequent intervals. Now and then they can come together and express their will. This they can do through the adoption of a written constitution, which is drawn up and submitted to them by representatives of their choice. It may, therefore, be said that a written constitution, or a body of universally accepted usage in accordance with which important questions are submitted to the people, is a necessary consequence of the acceptance of the theory of popular sovereignty.

In this country the written constitution has everywhere become the accepted method for the expression of the popular will. The constitutional conventions which are almost every year meeting in one or more of our States, the submission of the constitutions drafted by those conventions, and of amendments to those constitutions, upon which the people are being continually called to vote, are all due to our acceptance of this theory of popular sovereignty. In a word, all the organization and paraphernalia of constitution-making and amendment we have to provide, because of our acceptance of the proposition that the people are sovereign.

There would appear to be no sign that the theory of popular sovereignty is losing its hold upon the American

people. Indeed, there are indications that its hold is increasing rather than diminishing. The direct action of the people upon the government is continuously becoming of greater importance. Amendments to written constitutions are becoming more and more frequent.

We may say, then, with safety that the theory of popular sovereignty which was one of the incidents of the Social Contract Natural Rights theory has from the beginning of our history as an independent people had a controlling influence on our governmental organization. At the present time it has probably a greater influence than it ever had. Greater and greater numbers of persons are regarded as constituting the sovereign people. More and more frequently as time goes on is that sovereign being called upon to express its will. The only instances in which any signs of reaction are to be noticed are where questions of color have been raised. For good or for evil the country is and shows every sign of remaining a "white man's country."

This increase in the influence of the doctrine of popular sovereignty has gone on notwithstanding or perhaps because of the change in economic conditions to which your attention has been called.

Those classes of the people who have deemed themselves to be most unfavorably affected by economic change have apparently regarded representative government with increasing distrust and have, therefore, demanded with increasing insistence that the people should act directly in the determination of questions of policy through the adoption of constitutional amendments. This direct popular action finally has been possible because of improvement in the means of communication and because of the spread of popular

education which has facilitated intelligent popular action.

I have already called your attention to the fact that the historic English method of securing what Englishmen thought were their rights was the admission of more and more of the people to participation in the control of government. This was a practical measure which Englishmen had endeavored to apply to their political institutions before the propounding of any theory of popular sovereignty. As a result of it, England in the eighteenth century became a self-governing community in a sense quite different from other European countries.

English traditions of self-government were a part of the heritage which America received from the mother country. The conditions in America, therefore, favored the adoption of the general theory of popular sovereignty when it was propounded at the end of the eighteenth century. The Americans were, however, a practical people. While they apparently accepted the theory of popular sovereignty with enthusiasm, they did not at first permit it to influence seriously the details of their governmental organization. They preferred to follow the precedents of the past with which they were acquainted to establishing a new political system organized in accordance with the dictates of a newly propounded political theory.

All that the acceptance of the new theory of popular sovereignty accomplished was the provision of a foundation of theory on which the general governmental organization might rest. So far as concerns the details of that organization, the governments of the former North American colonies were taken as a model. These, it is well to remember, had been in their turn modelled

pretty closely on the governmental organization of Great Britain.

The new state governments which were established at about the time of the declaration of independence of this country made provision, therefore, for a Governor or President, who occupied a position similar to that occupied by the Governor of colonial days, with the exception that he owed his selection not to the Crown, but to the people; second, for a bicameral legislature almost identical, so far as concerns its organization and powers, with its colonial predecessors; and third, for a judicial department also organized upon the lines of the former colonial judiciary.

There was one point, however, in which the influence of theory is evident. Certain developments in the constitutional history of England just before the colonization of this country had brought about definite concrete results relative to the position and powers of the various governmental authorities. Thus, Parliament had secured through the adoption of various devices a position which was in large measure independent of the Crown. The Act of Settlement passed in 1701 had assured to the judiciary a similar position.

Further, the practice of the English government was such that the concurrence of at least two governmental authorities which were comparatively speaking independent of each other was necessary for almost every governmental act of importance. Thus, no law could be passed except as the result of the concurrent action of the two houses of which Parliament consisted. Parliament itself passed laws but did not enforce them. The enforcement of laws was entrusted to officers of the Crown, who because of their local position were in large measure independent of royal control. The officers

of the Crown who enforced the law finally could not interpret it in case there was doubt as to its meaning. The final interpretation of the law was entrusted to the courts.

Our forefathers, basing themselves upon these customs and usages, elaborated two theories of government which they attempted consciously to apply to the new political organizations they were establishing. These were the theories of the separation of powers and of checks and balances. We find the early state constitutions all actually based upon these theories and more than one expressly stating that such was the fact.

The reason why these theories were so acceptable in those days is the same which we found responsible for popular sovereignty. It was the fear that government might in some way deprive men of the natural rights with which it was believed they were endowed. Liberty at that time was regarded as supremely desirable. The one thing to be guarded against was tyranny. It was the fear of the tyranny of society exercised through the imposition of restrictions on individual initiative which led to the promulgation of the economic doctrine of non-interference to which I have called your attention. It was the fear of political tyranny through which liberty might be lost which led to the adoption of the theories of checks and balances and of the separation of powers. As some of the State constitutions expressly stated, these principles were adopted in order that the government to be established might be a government of laws and not of men. What was sought was thus the rule of law which had been almost from time immemorial the aim of the English in their political institutions.

The workings of the leaven of popular sovereignty upon the details of our governmental organization soon, however, became evident. The first sign was the extension of the suffrage. Originally, only those who had a certain amount of property were permitted to vote. Soon after the opening of the nineteenth century, however, the qualifications for voting were so changed as to permit every adult male of sound mind to cast a vote. Recent action has in more than one instance extended the suffrage to women also.

The next change that was made was made in the political organization of the separate States. Change in the formal organization of the National Government was difficult if not impossible because of the procedure necessary for the amendment of the United States Constitution. This document was the consequence of a temporary conservative reaction which followed upon the extreme radicalism incident to the struggle for national independence. Those who were successful in securing its adoption were not inclined to trust to the wisdom or discretion of the people. They, therefore, both provided a governmental organization which was not immediately responsive to popular opinion and devised a method of constitutional amendment which was so difficult of application that change except in details, the desirability of which was amost universally recognized, was practically impossible. The result was in the case of the National Government that the movement in favor of popular political control was without effect except in one respect, which, however, was an important one. This was the method of electing the President. The device of a presidential electoral college had been adopted in order among other things to make impossible the popular election of a President.

The people of the country were able, however, through extra-constitutional methods to obtain what was practically a popular presidential election. The organization of national political parties and presidential nominating conventions reduced the electoral college to a position of unimportance and enabled the people of the country to choose the President notwithstanding the provisions of the United States Constitution.

The State constitutions, however, were not so difficult of amendment, and did not, therefore, oppose an insurmountable barrier to political change. In the first quarter of the nineteenth century the change began. So far as concerns the central governments of the States the changes adopted resulted in giving to the voters of the State the right to elect most important State officers.

The local governments throughout the States also were affected by the same influences. In the county governments, for example, it is frequently the case that the various county officers, such as district attorney, members of the school board, county treasurer, registrar of deeds, and so on, are elected by the voters of the county. Usually the officers elected both for the State at large and for the local districts are elected for short terms in order to subject them more completely to popular control.

This movement in favor of the popular election of officers reached its apogee about the middle of the nineteenth century, when it affected seriously the organization of the cities. In some of the city charters which were adopted about 1850, we find provision made for the election by the city voters of almost all important city officers.

In very recent years the attempt has been made in a few States and cities to make the popular control permanent instead of periodic, as had been the case. The desired result has been sought by the adoption of what has been termed the "recall." In accordance with this scheme for permanent popular control over officers the voters are permitted at any time to recall an officer and replace him by one more acceptable to them. The recall has been combined with a fixed term,—usually a short one—at the end of which a new election must be had. Up to the present time, the power to recall has for the most part been confined to local officers.

The movement for the popular election of local officers has been accompanied by the provision either in the State constitution or laws that certain questions of policy also shall be decided by a popular vote. The questions usually thus submitted to the people have had to do with the sale of liquor, the incurring of debt, and the grant of franchises. In its original form, this popular determination of questions of policy is found in the New England town meeting where every important question of local policy has from almost the beginning of our history been decided at a public meeting of the voters of the town after a full and free discussion. In its latest form it is known as the referendum and initiative and has been adopted both in the case of city charters and of matters of State concern. Its use is much less frequent in the case of State than in that of local matters. It is, however, to be remembered that the growing size and comprehensiveness of State constitutions and their more frequent amendment calls for greater and greater participation upon the part of

the people in the determination of matters of State policy.

The increase in the number of voters as well as the wider participation of the voters in the operations of government due to the greater number of elective officers and to the adoption of the initiative, referendum and recall have made necessary a very elaborate organization for the registration of the voters and the receipt and counting of the vote. Probably in no other country in the world is there such an elaborate election law as is to be found in most American States. The elaborate, comprehensive and technical character of this law has been greatly increased during the past twenty-five years, because it has been extended as well to the operations necessary for the nomination of party candidates. The party primaries of the present day have as a result of the desire of the people to control them as well as public elections become a part of the political organization made necessary by the acceptance of the doctrines of the sovereignty of the people and of popular participation in the operations of government.

Our governmental organization developed at a time when expert service could not be obtained, when the expert as we now understand him did not exist. The days which saw the establishment of our political system were days of great economic simplicity. There was little division of labor, and almost no specialization. The things that were done were done for the most part according to rule-of-thumb methods. Men were able and were accustomed to turn as necessity required from one occupation to another, and to perform with reasonable success the tasks demanded by the primitive conditions of the time. There were

hardly any learned professions apart from the clergy, from whom in some of the religious denominations, a modicum of education was required. On the one hand the lawyer, and on the other, the physician was expected to fit himself for his future work in much the same way in which one who expected to become a skilled workman acquired the knowledge of the trade he was to follow. That is, he entered the office of a practitioner, and both by practical work and by study under the guidance of his patron did what was necessary to prepare himself for the not very serious tests to which he must submit before he could enter upon the practice of his so-called learned profession. Apart from the lawyer and the physician, it may be said that there were no occupations for which even a moderate theoretical training was required.

Under these conditions it is no wonder that the need of expert service in the government was not felt. The operations of government were very simple both because of the primitive social and economic conditions, and because public opinion did not approve of an extensive sphere of governmental activity. When we take into account on the one hand the environment in which men lived in this country prior to the middle of the nineteenth century, and on the other hand the prevailing political philosophy with its emphasis on individual liberty, and popular sovereignty, and its abhorrence of a permanent governing class, we can well understand the development of the idea which was so commonly held that rotation in office was a cardinal doctrine of American government. Frequent change in offiicals, for the most part elected by the people, subjected the government to a periodic popular control, and prevented the development of a

permanent governing class which might act tyrannically. Apparently, little thought was given to the question whether the government was efficient. What was desired was not so much efficiency as liberty.

The governmental system based on such principles was necessarily not efficient. Its inefficiency was probably, however, not so great or at any rate the results of its inefficiency were not so noticeable as one might at first suppose. The times were times of great simplicity, the sphere of government was very narrow, great reliance being placed on individual initiative, and the expert had not as yet developed partly at any rate because he was not believed to be needed.

As, however, the conditions of American life became more complex, as greater demand was made for social coöperation, as our educational system began to be changed in such a way as to give more attention to the application of scientific methods to the conduct of the ordinary affairs of life, the American conception of government began to change.

The complexity of American life was increased largely because of the development of transportation facilities due to the building of railways, the digging of canals, and the improvement of water ways. This progress in the means of communication had for its immediate effect the building up of cities. Industrial life also began at about the same time to replace, or at any rate to rival, the agricultural life which had been the distinctive characteristic of this country.

The larger undertakings which were consequent upon the greater development of commerce and industry, and the growth of an urban population with an incidental extension of governmental activity, called for a higher degree of social coöperation than was required for

agricultural life in rural districts, and demanded a greater amount of expert service.

Our system of education was for a long time not devised for the purpose of producing the expert. It had not outgrown the influences of scholasticism and the Renaissance. Professor Tyler, of Amherst, tells us for example what was the college course of about 1830. He says:

"Greek, latin and mathematics six times a week, with a little natural philosophy at the end, and perhaps a little rhetoric and logic in the middle was the curriculum for the first three years, and mental and moral philosophy with a sprinkling of theology and political economy was the course for the fourth year."

One of the first, if not the first, of the attempts made in this country to modify our educational system in such a way as to provide systematic training for more of the pursuits of life was made by Thomas Jefferson when he founded the University of Virginia. Jefferson's plans were not immediately successful. The conservative educational tradition was too strong for him, as it is for most educational reformers. The intellectual aristocrats of the day who regarded learning as not for the masses were able to hold their own, and Jefferson died a disappointed man, certainly so far as concerns his plans for educational reform.

President Wayland of this University made probably the next serious attack on the existing educational system. This he did in his remarkable report of 1850. He said, referring to the needs of the country at the time: "Lands were to be surveyed, roads to be constructed, ships to be built and navigated, soils of every kind and under every variety of climate were to be cultivated, manufactories were to be established, which

must soon come into competition with those of more advanced nations, and in a word all the means which science has provided to aid the progress of civilization must be employed, if this youthful republic would place itself abreast of the empires of Europe. What," he asked, "could Virgil and Horace and Homer and Demosthenes, with a little mathematics and natural philosophy do toward developing the untold resources of this continent?"

The middle of the nineteenth century indeed was apparently a period of ferment in the higher educational world. In 1856 thus the first Agricultural College in the country, and if I am not mistaken, in the world, was established by the gentlemen farmers of southern Maryland. The act of the State legislature incorporating the Maryland Agricultural College declared that the institution should, "in addition to the usual course of scholastic training, particularly indoctrinate the youth of Maryland, theoretically and practically, in those arts and sciences which with good manners and morals shall enable them to subdue the earth."

In 1862 the United States Congress provided for the endowment in each State of "one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts—in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life."

One of the principal characteristics of President Wayland's plan was, to use his own words, that "every student might study what he chose, all that he chose, and nothing but what he chose," a principle that the

average undergraduate of the present day would probably accept without serious objection. In other words, Dr. Wayland advocated among other things, what has since come to be known as the elective system. This system with modifications has been introduced almost everywhere and has had great influence in opening the door to something in the nature of a training for the expert.

One of the results of this movement is that both in and out of the universities there are at the present time schools which endeavor to fit men for occupations, entrance to which was at one time secured merely as the result of practical experience. Schools of Law, Medicine, Engineering, Dentistry, Pharmacy, Education, Agriculture, Architecture, Journalism, Business Administration and Domestic Science, not to mention others, are rapidly transforming what were once regarded as trades into learned professions; i. e., professions entrance to which follows a systematic education.

We have thus begun in the United States the education of the expert in the conduct of the ordinary affairs of life, matters some of which were at one time not regarded as worthy of the attention of the so-called scholar. If your great President Wayland were alive now, he could congratulate himself that his dream has all but been realized in modern American education. I say "all but" advisedly. For we have by no means as yet done what needs to be done in order that we may have expert service along all the lines in which the expert is needed. Nor have we made the progress which has been made in some other countries, of which Germany is an example. The tremendous industrial, commercial, political and social progress which Germany has made within the experience of living men has

been in no small measure due to her ability to educate and employ experts in the various lines in which her progress has been so marked. But we in America have already taken long steps on the path marked out by your great president, and there is every indication that our progress will be more rapid in the future than it has been in the past.

The increasing complexity of our American life, the higher degree of social coöperation made necessary by the larger enterprises which had to be undertaken, the extension of the activities of government and the education of the expert have all of course reacted on each other. But whatever may have been their mutual reactions they have all at the same time contributed to the modification of the original American conception of government. Whereas, at one time American government was organized primarily, if not exclusively, for the purpose of securing liberty, it is now organized secondarily at any rate in order to secure social efficiency.

It would, of course, be impossible in the time at our disposal to attempt any detailed history of the changes in the organization of American government which have been made within the last three quarters of a century, with the purpose of securing greater efficiency. I may perhaps be permitted, however, to call attention to two or three of the most important.

The first of these changes is to be found in our municipal organization. The effect upon the American system of city government of the adoption and application of the principle of popular sovereignty was the disintegration of the originally rather compact municipal organization which we inherited from England. This system centered all powers, roughly speaking, in

a council elected by a rather narrow body of municipal voters. The widening of the suffrage to which your attention has been directed was accompanied by a modification of the city organization in such a way as to subject almost every important part of it to direct popular control to be exercised at the city elections. Probably the highest point in this movement was reached about 1850. If you take the charter of the City of New York adopted in 1849 you will find that in addition to the members of the council, the Mayor, almost all the heads of the city departments, and the members of the city judiciary, were elected by the people. Even now, although the force of the popular movement is well nigh spent, you still find in most city charters which are not of recent date a number of officers besides the Mayor, who owe their offices to popular election.

Since the middle of the nineteenth century, however, the tendency has been away from the unconcentrated organization which has been noted and is at the present time towards a system which lays much greater emphasis on the necessity of securing administrative efficiency. For a time resort was had to a system of boards the terms of whose members did not all expire at the same time. The purpose of the arrangement was to secure greater permanence of tenure and greater continuity of policy, both of which were believed to secure efficiency, although it was evident that such a system diminished popular control. Indeed, popular control was so difficult of exercise that later the board system was abandoned and resort was had to what has come to be known as the "Mayor system" which, as its name would indicate, centered the control and responsibility for the city government in a Mayor

who was almost the sole administrative officer elected by the people.

Most American charters prior to 1900 showed traces of the influences of all these different systems. In almost every city there was some executive officer besides the Mayor who was elected by the people, there were usually a board or two like the School or Health Board, organized on the regular board plan, while the Mayor almost everywhere was gaining in power. The Council on the other hand almost everywhere was losing in importance and had almost touched the vanishing point in those cities which had adopted a budget system in accordance with which the estimates for city appropriations proposed by the executive officers could not be increased by the Council.

In 1900 the next important step in the direction of securing greater municipal efficiency was taken. This was the date of the adoption of the Commission system by the City of Galveston. The great Galveston flood of 1900 turned out to be a blessing to American municipal government, although this blessing must have appeared to the citizens of Galveston to have come to them under an almost impenetrable disguise. Galveston was as a result of former misgovernment and of the flood in a condition of such dire distress that she had to become efficient if she were to continue to exist. She, therefore, adopted this Commission system as it has come to be called. The characteristics of this system were the limitation of popular participation in the government and the concentration of all powers legislative as well as executive in a commission of five men, only three of whom were elected, the rest being appointed by the Governor of the State. Later all five were made elective, and the elective form has be-

come the prevailing form, and is probably the most widely diffused well defined type of city government which we now have in the United States.

The most recent move in the direction of municipal efficiency is to be found in the provision of what is known as the "city business manager." Quite a number of cities have already made provision for such an officer. The fundamental aim of this form of city government is municipal efficiency. The favor which it has secured emphasizes the point which I have endeavored to make, viz.: That the present trend of city organization is in the direction of efficiency, and that as a result popular participation in municipal government is diminishing rather than increasing. The only point in which the old idea of popular sovereignty would seem to be holding its own is the determination of municipal policy. The initiative and referendum which are often associated with the Commission form of city government give to the people powers to determine directly the sphere of municipal activity which they have not possessed until comparatively recently.

The second example of the modification of the original American conception of government through the emphasis of the idea of efficiency is to be found in the organization of a civil service with a reasonably permanent tenure, the members of which are selected because of merit and fitness.

We are apt to associate this movement with what is usually spoken of as Civil Service Reform. As a matter of fact, however, there were long before the Civil Service Reform movement was inaugurated evidences of this desire to secure efficiency through the establishment of a professional civil service which might offer a career to those who entered it. Probably the first

branch of the public service which was affected by it was the educational service. From quite an early time in our history, the attempt has been made to secure competent teachers in the public schools by means of some method of examination, the passing of which was rewarded by a certificate. It was only natural that the movement for efficiency should begin in connection with the schools. For the schools have been the one part of our administrative system which we have almost from the beginning attempted to protect against the influences of partisan politics, the form which an unlimited popular control seems usually to assume. With this idea in mind, we have often given to our school administration a particular organization independent of our regular governmental authorities in the hope that we might protect our schools from the evils which are incident to our partisan political system.

The movement for securing more efficient teaching in our public schools was accompanied by the assumption on the part of the State and in a number of instances of the cities as well of some measure of responsibility for the education of teachers. This was done through the establishment of the Normal Schools and Colleges and Training Schools for Teachers, which have become at the present time almost everywhere a part of our public educational system.

Again the purely administrative side of our school system has been in almost all States completely reorganized under central authorities like Boards and Superintendents of Education, whose duty it is to supervise the actions of the local school authorities with the object of securing greater efficiency.

Some time after the attempt was thus made to obtain more efficient teachers in the public schools,

a similar movement began in the case of the police administration in most of our larger cities. The great growth of our urban population and the phenomenal development of particular cities made necessary a complete reorganization of the existing system for the preservation of the peace. Naturally, the movement took shape first in the largest cities like New York and Philadelphia. By the middle of the nineteenth century, it had resulted in the establishment, after the English model, which was adopted for London only in 1829, of a professional uniformed reasonably permanent police force organized in quasi-military fashion. That the change has resulted in greatly increased efficiency can not be doubted. That American police forces leave much to be desired is also true. The proper organization and management of city police forces in the United States are as yet unsolved problems. At the same time it is certain that the primary end of the various police reforms which are proposed is greater efficiency in the discharge of police duties, that is the prevention of crime and the enforcement of the law.

Other branches of city administration, such as the fire department and the public health service, as they developed were subjected to the same influences quite a while before the general movement for Civil Service Reform was inaugurated.

It is customary to assign 1870, the date of President Grant's message to Congress, as the year in which Civil Service Reform began in this country. A study of the history of Congressional legislation upon the general subject of administrative efficiency will show, however, that Congress had for some time been aware of the inefficiency of the service, and had made several attempts to remedy it. The most notable was an Act

passed about 1855, which provided examinations for entrance into the service at Washington. Furthermore, both the military services and one or two of the civil services of the Federal Government, like the Coast Survey and the Marine Hospital Service, have from almost the beginning of their history been organized in such a way as to secure, comparatively speaking, a high degree of efficiency.

But President Grant's message in 1870 had the effect of causing the idea of appointment for merit to be applied very much more generally throughout the Federal Government. Indeed, with the exception of a period of nine years, from 1874, when Congress refused to make an appropriation for the Civil Service Commission, to 1883, when the present law was passed, the progress of the movement has been very rapid. The merit system has not only been adopted in practically all branches of the Federal administrative service. It has also spread to a number of the States, and been incorporated into the charters of a much greater number of cities.

In both the Federal Government, and particularly in the State governments, there is still great room for progress. The idea of permanent professional service has not as yet been applied to many of the higher positions, even in the Federal Government, while in many of the States the lower positions are still the spoils of partisan politics. Until a change is made in these respects it is almost useless to expect that men of ability and ambition will seek to make of the Civil Service a career. While the Federal Government has established educational institutions for the training of those who enter its military services, neither it nor any State government has done anything of moment

for the education of its civil servants apart from the teachers in the public schools. The success which the government academies at West Point and Annapolis have had in improving the character of the officers in our army and navy would seem to present a strong argument either for the establishment of similar government institutions for the Civil Service or for the grant of encouragement to the privately or State managed educational institutions to develop courses or departments for the training of aspirants for civil offices.

At the same time, while recognizing to the full our failure to secure that measure of efficiency in our government service which must be secured if as a nation we are to take the place in the world which it would almost seem from recent events is to be thrust upon us, it can not be denied that we are endeavoring, and it would seem with no small measure of success, to make administrative efficiency an important aim of our governmental organization.

The only other matter to which the time at our disposal permits me to direct your attention has to do particularly with the administration of our public finances. For various reasons, our general governmental system was soon after its establishment organized on the theory that the initiation and determination of questions of policy were to be made by the legislative authority, and that the executive was to be confined to the execution of policies adopted as a result of legislative action. The only influence which by American Constitutions was accorded to the executive over the determination of questions of policy was to be exerted through the exercise of a limited veto power, and through the sending of messages to the legislatures

which they might or might not as they saw fit, seriously consider.

From the point of view of efficiency, this was an unfortunate arrangement. A great many questions of policy, particularly those which have to do with governmental activities, cannot be intelligently initiated by those who have had no administrative experience. Questions of merely legislative policy, further, are usually at the same time party issues with regard to which the Executive, as a party leader, should exercise a large if not controlling influence. These considerations have led naturally to a change in the actual position occupied on the one hand by the legislature and on the other hand by the Executive, the original theory of our government to the contrary notwithstanding. Gradually, the Executive has been exercising a greater and greater influence over the determination of legislative policy. He cannot as yet in all cases force the adoption of his positive views, but practically no policy of which he seriously disapproves has any serious chance of adoption. The result of this development has been greater legislative efficiency, a clarifying of political issues and in general a greater effectiveness in governmental action.

In one respect, however, progress has been impossible. This is in our financial administration. Inadequate provision has been as yet made for placing before the legislature a complete picture of the financial conditions of the government. When it has been called upon to make appropriations for the purposes of government, it has not always been known either how much money it would be called upon to spend, or how much money was at its disposal. In the National Government, these conditions have not ordinarily had serious

results inasmuch as the revenues have been based upon a social rather than a fiscal policy, and have often been more than amply sufficient for the needs of the government. Extravagance was of course the result, but the expenditures were not so great as ordinarily to produce a deficit. In very recent years in the case of the National Government, and for quite a time in the case of a number of the State governments, and of most of the city governments, expenditures have under this method been increasing out of all proportion to the ordinary increase in the revenue. Deficits have not infrequently resulted which have been provided for by borrowing money. In many instances the methods of American public finance have had for their result the payment of the current expenses of government by mortgaging the future, certainly an inefficient method of treatment.

The first serious attempt to change these conditions was made in the cities where the change was most needed. The remedy provided was the introduction of what has been called the budget system. The characteristics of this system were:

1st. The presentation before the beginning of each fiscal period of a complete plan of all proposed financial operations of that year, including estimates of expenditures and revenue;

2d. The revision by a body representing the city as a whole of the estimates of expenditure made by those in charge of particular governmental activities;

3d. The submission of the estimates so revised to the legislative body of the city, which, after the English plan, was sometimes permitted only to reduce or strike out, but not to increase items of proposed appropriations.

This plan has worked so successfully in the case of cities, if not in actually reducing expenditures, certainly in preventing their inordinate increase and in eliminating deficits in operation that a very marked movement is already under way to introduce it into both the Federal and State governments. Already a number of States have by law provided for a budget subject to revision either by the Governor, or by a board of estimates prior to submission to the legislature. But none of the plans which have been adopted has as yet taken from the legislature the power to increase items of appropriation. The Governor has, however, by many State constitutions the power to veto items in appropriation bills and has thus quite an effective control of the situation if he is inclined to exercise it.

I have not attempted to make an exhaustive enumeration of the various attempts which have been made in the last half century of the life of this country to make our governmental organization more effective. I have, I hope, however, adduced enough examples to show that social efficiency is at the present time one of the principal aims of the American people. The burst of enthusiasm for popular participation in the work of government which was so characteristic of the first half century of our national life has almost spent itself, except in those parts of the country whose economic life has been least subjected to modern influences. In some of these districts the idea still lingers and is a force to be reckoned with. Not more than three or four years ago, the Governor of one of the Rocky Mountain States vetoed a bill which attempted to change the method of filling the office of State Veterinarian from popular election to executive appointment. He gave as the reason for his action his belief

that executive appointment savored too much of monarchical government to be suited to the democratic State over whose destinies he presided.

Generally speaking, however, the power of the people to elect directly public officers is diminishing. The change is not, however, as has been pointed out, due to any decrease in the belief in the general theory of popular sovereignty. The people through the referendum and initiative are exercising greater power than ever over the determination of questions of policy. They have, however, in the interest of efficient government, been willing to surrender powers of choosing public officers which they at one time regarded with great jealousy.

When we come then to consider our national political philosophy from the point of view of the organization of our government, we reach the same conclusion which a review of the history of our conceptions of liberty forced upon us. We saw as a result of that review that while we had not abandoned the general theory of natural rights, we had subjected it to so many limitations that our concrete and detailed conceptions of liberty had been greatly modified where changes in social conditions made such modifications necessary or even expedient. When we trace the concrete applications of the doctrine of popular sovereignty which lies at the foundation of the theory of natural rights, we find that although we have retained the doctrine in a general way we have in the details of our governmental organizations modified very greatly our ideas as to its necessary or even desirable implications.

The American conception of government like the American conception of liberty has had to submit to modifications in the interest of social efficiency. Social

efficiency is a much more important factor than it once was in the determination both of our sphere of liberty and of our form of government. The individual's duty to society rather than the rights which he possesses is being emphasized in courts of justice, halls of legislation, the pulpit, and by the press. That the change in our point of view is a salutary one hardly admits of doubt. For it is only as individuals limit their conceptions of their rights by considerations of social justice and expediency, only as they come to recognize the existence and the imperative character of their social duties, that we can hope for the development of that social efficiency which is necessary both for individual happiness and the public welfare.